90-1410

Supreme Court, U.S.
FILED
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

ROLAND L. GOAD

Petitioner

v.

JOHN ANDREW ROLLINS, et al

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ROLAND L. GOAD, Petitioner
310 Sara Lane
Huntsville, Texas 77340
(409) 291-2430
(pro se)

March 11, 1991

QUESTIONS PRESENTED

1. Did the Court of Appeals err when it dismissed Petitioner's timely appeal as "patently frivolous" without making any analysis of the eleven issues raised and briefed by Petitioner? Was the appeal frivolous?

2. Did the Court of Appeals err when it imposed sanctions including injunctive relief in favor of each respondent without notice or opportunity for objection by Petitioner?

3. Did the Court of Appeals err when it denied a timely and unopposed request that judicial notice be taken of another pending action having a direct relation to matters raised in an appellee brief?

PARTIES

Petitioner

Roland L. Goad

Respondents:

Private attorneys:

John Andrew Rollins
Steven C. Haley
Pierce P. Stacy III
Alfred W. Davis
Alfred W. Davis III

Private citizen:

Elna P. Davis

Local Government Unit:

Brazos County, Texas

Brazos County officials:

John Delaney (judge)
Ron Miller (sheriff)
Allie W. Lewis (bailiff)
Leticia Wilkerson (jailer)
Ron Huddleston (jailer)
John Godfrey (jailer)
Charles R. Blondeau
(deputy sheriff)
Michael A. Fitzgerald
(jailer)
Bill Cooley (commissioner)
Walter Wilcox "
Billy E. Beard "
Milton Turner "

INDEX

SUBJECT	PAGE
Questions presented	i
Parties	ii
This Index	iii
Citation to opinions below	2
Jurisdiction	3
Jurisdiction in the district court	3
Jurisdiction in the court of appeals	3
Constitutional provisions and statutes that the case involves	4
Factual background	6
Proceedings in the district court	10
The pending Tucker Act claim	13
Proceedings in the court of appeals	16
Discussion	19
Reasons for granting the writ	27

APPENDIX	SUBJECT	PAGE
A	Opinion, Court of appeals No. 90-2270, Jan. 18, 1991	1a
B	Final judgment, No. H-86-3433 Goad v. Rollins, S.D. Tex. Feb. 28, 1990	9a

C Order, No. H-86-3433, S.D. Tex. Feb. 28, 1990, dismissing action 10a

D Protective order, No. H-86-3433 March 11, 1987 16a

E Order dismissing Judge Delaney H-86-3433, May 14, 1987 18a

F Order denying partial summary judgment, H-86-3433, May 14, 1987 22a

G Order striking pleadings, H-86-3433, April 17, 1989 23a

H Conference minutes and order H-86-3433, May 5, 1989 24a

I Excerpts, Brief in court of appeals No. 90-2270, April 17, 1990 25a

J Excerpts, Brief in court of appeals by Respondent Rollins, June 15, 1990 36a

K Excerpts "Request for Judicial Notice", No. 90-2270, June 28, 1990 37a

L Excerpts of Tucker Act claim pending in U.S. Claims Court 39a

M Excerpts of brief of Judge Delaney, No. 90-2270, August 15, 1990 41a

N Excerpts, motion to strike No. 90-2270, August 28, 1990 44a

O Excerpts, original petition, No H-86-3433, September 8, 1986 46a

P Excerpts, answer, H-86-3433 October 7, 1986 52a

Q Stipulation, H-86-3433 March 2, 1987 55a

R Excerpt, proceedings in H-86-3433 on May 5, 1989 57a

S Excerpt, Affidavit, H-86-3433 October 6, 1989 60a

T "Contempt Order and Commitment" State court, September 13, 1985 68a

U Excerpts, "Third Amended Motion For Contempt" in State court December 20, 1985 74a

TABLE OF CASES

CASE	PAGE
Canter v. American & Ocean Ins. Co., 3 Pet. (28 U.S.) 307 (1830)	20
City of Dallas v. Moreau, 718 S.W.2d 776 (Tex.App.-1986)	19
Coghlan v. Starkey, 852 F.2d 806 (CA5 1988)	22
Dandridge v. Williams, 397 U.S. 471 (1970)	26
DeNardo v. Murphy, 781 F.2d 1345 (CA9) cert. denied, 476 U.S. 1111 (1986)	25
E. I. DuPont de Nemours & Co. v. Cullen, 791 F.2d 5 (CA1 1986)	20
Estelle v. Gamble, 429 U.S. 97 (1976)	25

Flaherty v. Flaherty, 646 P.2d 179 (Cal. 1982) 24

Foret v. Southern Farm Bureau Life Ins. Co., 918 F.2d 534 (CA5 1990) 22

Gabel v. Lynaugh, 835 F.2d 124 (CA5 1988) 22, 23

Goad, Ex Parte, 690 S.W.2d 894 (Tex. 1985) 8

Goad v. United States, 661 F.Supp. 13, 1073 (S.D.Tex. 1987), aff'd in part, vacated in part, and remanded, 837 F.2d 1096 (CAFC 1987) (table), cert. denied, 485 U.S. 906 (1988) 14

Goad v. Goad, 768 S.W.2d 356 (Tex. App-1989), cert. denied 110 S.Ct. 722 (1990) 14

Goad v. United States, No. 90-72C U.S. Claims Court (pending) 14, 15

Gustafson v. Cornelius Co., 724 F.2d 75 (CA8 1983) 19

Lay v. Anderson, 837 F.2d 231 (CA5 1988) 22

Massachusetts Mutual Life Ins. Co. v. Ludwig, 426 U.S. 479 (1976) 20

Morley Const. Co. v. Maryland Casualty Co., 290 U.S. 484 (1934) 20

Nietze v. Williams, 490 U.S. 319 (1989) 24, 25

Patterson v. Patterson, 808 F.2d 357 (CA5 1986) 23

Prokop v. Strickland, 792 F.2d 1069 (CA11 1986) 25

Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980) 26

Simmons v. Poppell, 837 F.2d 1245 (CA5 1988) 23

Stelly v. Commissioner, 804 F.2d 871 (CA5 1986) 23

United States v. Jones, 580 F.2d 219 (CA6 1978) 19

Statutes

28 U.S.C. §§ 1254(1); 1291; 1331 & 1343 3, 4

Fed. Rule Civ. P. 12(b)(6) 25

Fed. Rule App. P. 38 5, 21

Fed. Rule Evid. 201(d) & (f) 5, 19

OTHER TEXTS

Cogan, The Inherent Power and Due Process Models In Conflict, Sanctions in the Fifth Circuit, 42 Sw.L.J. 1011 (1989) 24

Martineau, Frivolous Appeals: The Uncertain Federal Response, 1984 Duke L.J. 845 21

Martineau and Davidson, Frivolous Appeals in the Federal Circuits: The Ways of the Circuits, 34 Amer. U. L. Rev. 603 (1985) 21

J. Weinstein & M. Berger, Weinstein's Evidence, ¶ 201[06] (1976) 19

21 Wright and Graham, Federal Practice and Procedure, § 5110 (1977) 19

Note: Preserving Pro Se Representation in an Age of Rule 11 Sanctions, 67 Tex.L.Rev. 351 (1988) 25

IN THE

SUPREME COURT OF THE UNITED STATES

NO.

ROLAND L. GOAD, Petitioner,

v.

JOHN ANDREW ROLLINS, Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

The Petitioner, Roland L. Goad, respectfully prays that a writ of certiorari issue to review the opinion and order of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on January 18, 1991, No. 90-2270. [App. A, pp. 1a to 8a] [1]

1/ References are to the appendix of this petition.

CITATION TO OPINIONS BELOW

This civil rights action was filed in the United States District Court for the Southern District of Texas, Houston Division, on September 8, 1986. [App. 46-51a]. A final order dismissing the action was entered by the district court on February 28, 1990. [App. 9a]. Petitioner timely appealed the dismissal to the United States Court of Appeals for the Fifth Circuit in which eleven (11) issues were raised and briefed. [App. 25-35a]. The Fifth Circuit dismissed the appeal as "patently frivolous" but made no analysis of any of the eleven issues raised. [App. 1-8a].

Petitioner seeks a writ of certiorari in this Court to review the action of the United States Court of Appeals for the Fifth Circuit in its decision announced on January 18, 1991.

JURISDICTION

On January 18, 1991 the United States Court of Appeals for the Fifth Circuit dismissed Petitioner's timely appeal. [App. A]. A request for rehearing was not made. This petition for writ of certiorari will have been filed in this Court before the expiration of 90 days from January 18, 1991; and, this Court's jurisdiction to consider this petition is invoked under the provisions of 28 U.S.C. § 1254(1).

JURISDICTION IN THE DISTRICT COURT

Jurisdiction in the district court was invoked pursuant to 28 U.S.C. §§ 1331 and 1343. [App. 46a].

JURISDICTION IN THE COURT OF APPEALS

Jurisdiction in the United States Court of Appeals for the Fifth Circuit was invoked under 28 U.S.C. § 1291. [App. 25a]

CONSTITUTIONAL PROVISIONS AND STATUTES THAT THE CASE INVOLVES

28 U.S.C. § 1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1291

The courts of appeal (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1343(a)(3)

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Federal Rule Appellate Procedure 38:

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Federal Rule of Evidence 201(d):

A court shall take judicial notice if requested by a party and supplied with the necessary information.

Federal Rule of Evidence 201(f):

Judicial notice may be taken at any stage of the proceeding.

FACTUAL BACKGROUND

On March 8, 1983, Respondent John Andrew Rollins, acting on behalf of Mary Beth Goad, filed criminal contempt charges in which he alleged Petitioner had failed to deliver "retirement benefits" as ordered in a 1980 decree of divorce. Petitioner was not served with the contempt charges. [App. 61a]. Amended motions were filed on October 31, 1984 and on November 21, 1984 asserting charges of criminal contempt and seeking punishment that, if granted, would have aggregated to 23 years in prison plus a fine of $23,000. Petitioner made a timely request for trial by jury on these serious criminal charges and immediately thereafter on December 20, 1984 a third amended motion for contempt was filed that deleted all references to criminal charges but purported to allege a single act of "civil" contempt from January 1981 through January 3, 1985 - a period that extended fourteen days beyond

the date a show cause order was served on Petitioner. [App. 75a].

On January 3, 1985 a purported contempt hearing was had before Judge JOHN DELANEY without a jury solely on the basis of the "civil" contempt motion filed on December 20, 1984. [App. 74a].

On January 3, 1985, Judge Delaney declared from the bench that he had found Petitioner in "civil" contempt of court and verbally ordered his immediate arrest and incarceration in the Brazos County jail. [App. 20a, 47-48a ¶15, 52a ¶15, 62a] Judge Delaney's verbal arrest order has never been memorialized in any written court order [App. 62a] however a falsified court order was entered in the minutes of the 272nd District Court on January 7, 1985 - the fifth day of Petitioner's incarceration in the Brazos County jail. [App. 50a ¶19, 53a ¶19, 62-65a]

A capias issued with the falsified court

order on January 7, 1985, on which false information was entered showing an arrest on January 7, 1985 has never been filed in the court records of Brazos County. [App. 65a]. There is no court record that shows when, where, how, or by whom Petitioner was arrested or if he has ever been found by the sheriff as regards the capias issued on January 7, 1985.

A petition for writ of habeas corpus was denied. Ex Parte Goad, 690 S.W.2d 894 (Tex. 1985).

A new motion for "civil" contempt was made on August 29, 1985 for Petitioner's failure to deliver "benefits" he had received "from, and including, **December 21, 1984 until April 15, 1984.**" - An impossible period of time. [App. 66a]. A "show cause" order and notice from the clerk informed Petitioner that he had been charged with "civil" contempt for failure to deliver "benefits" he

had received "from, and including, **December 21, 1985 until April 15, 1985.**" - Such impossible dates appearing in four places on the show cause order and notice. Later, on September 13, 1985, Judge Delaney signed a purported "Judgment of Contempt and Order of Commitment" [App. 68-73a] directing the incarceration of Petitioner in the Brazos County jail until he delivered those "benefits" received "from and including **December 21, 1985 until April 15, 1985.**" Such impossible dates appearing in five places on the order. [App. 68a (once), 70a (once), 71a (twice) and 72a (once)].

Those facts recited above form the basis of just one of the nine causes of action that were presented in the civil rights suit filed on September 8, 1986, No. H-86-3433, styled Goad v. Rollins, et al. [App. O, 46-51a].

PROCEEDINGS IN THE DISTRICT COURT

In this civil rights action nine causes of action were asserted against Brazos County, Texas and twenty individuals. [App. 27a]. The case was filed on September 8, 1986 and assigned to Judge Gabrielle K. McDonald who later resigned her office in August 1988. It was then assigned to Judge Simeon T. Lake who had been appointed to the Bench on September 2, 1988.

The case accumulated 158 docket entries during the 42 months it remained in the district court, and the case accumulated about three cubic feet of documentation in six volumes of record.

The district court proceedings, as adumbrated in the court of appeals, are set out in the appendix [App. 27a-35a].

Brazos County filed its answer [App. 52a] and Judge Delaney moved for dismissal as to him personally on his claim of judicial

immunity. [App. 27a ¶4] after which Petitioner moved for partial summary judgment. [App. 27a ¶5]. Judge Delaney requested and was granted a protective order excusing him from responding to the motion for summary judgment [App. 16a]. Judge Delaney was dismissed as a defendant but the order was not certified as a final appealable order [App. 18a] and the motion for summary judgment was denied but no findings of fact or conclusions of law were made concerning the considerable documentary evidence filed by the parties in support of, and in opposition to the motion. [App.29a ¶9].

Brazos County stipulated that it was the real party in interest as the suit concerned its agents and employees. [App. 55].

On May 5, 1989 the district court denied Petitioner's motion for leave to amend his complaint but made no explanation for that refusal. [App. 24a].

During 1989 some, but not all, of the defending parties moved for dismissal or summary judgment [App. 30-32a]. Petitioner responded in opposition by an affidavit controverting the "facts" claimed in the motions [App. 33a ¶17, 60a-67a].

The district court conducted a "conference hearing" on May 5, 1989 and "docket call" on October 13, 1989 at which time it dismissed the entire action except for one claim against Sheriff Miller. That last item was dismissed in the final order entered on February 28, 1990.

No dispositive motion was ever filed on behalf of Brazos County or Respondents Cooley, Wilcox, Beard or Turner. Nonetheless, they were all sua sponte granted summary judgment dismissals without any advance notice by the court of its intentions. [App. 13a].

THE PENDING TUCKER ACT CLAIM

This civil rights action was brought in the United States District Court for the Southern District of Texas, Houston Division, on September 8, 1986. Docket Number H-86-3433. Simultaneously a Tucker Act claim was brought against the United States. Docket Number H-86-3432. After the Tucker Act case was filed, the claims aggregated to more than $10,000 thereby depriving the district court of its jurisdiction. In dismissing the action, the court refused to transfer it to the U.S. Claims Court. Even though jurisdiction was lacking, the court rendered a declaratory judgment and granted the Government's motion for summary judgment and imposed sanctions. On appeal the Federal Circuit vacated the declaratory judgment and remanded with instructions to vacate the summary judgment and to enter orders of dismissal but affirmed the imposition of sanctions. Certiorari was

denied. Goad v. United States, 661 F.Supp. 1073 (S.D.Tex. 1987), aff'd in part, vacated in part, and remanded, 837 F.2d 1096 (CAFC 1987) (table), cert. denied, 485 U. S. 906 (Feb. 29, 1988). Immediately thereafter, on March 17, 1988 an original action was initiated in state court seeking an order quashing, dissolving and recalling a "writ of garnishment" honored by the Air Force on June 28, 1985 - the underlying cause of the Tucker Act claim. That action was dismissed for want of jurisdiction and sanctions were imposed; affirmed on appeal and certiorari denied. Goad v. Goad, 768 S.W.2d 356 (Tex.App.-1989), cert. denied, 110 S.Ct. 722 (January 8, 1990). Immediately thereafter, on January 22, 1990, an original action was filed in the United States Claims Court and Mary Beth Goad was "noticed in" as a party. Docket No. 90-72C [App. L]. In the Claims Court a motion for summary

judgment has been filed by Petitioner which is opposed by the Government's obligatory motion to dismiss for failure to state a claim. The case has been fully briefed and was taken under submission on September 17, 1990. A decision is expected at any time now, perhaps as this case is under consideration in this Court. The issues presented in the Claims Court are:

> "Mary Beth Goad does not 'own' a portion of Plaintiff's retired pay ...
> Until the Air Force has been served with 'legal process' issued by a court of competent jurisdiction, there exists no lawful authority for the Government to pay funds directly to Mary Beth Goad out of the Department of Defense Military Retirement Fund."

App. L, p. 40a.

PROCEEDINGS IN THE COURT OF APPEALS

A final order dismissing the case in the district court was entered on February 28, 1990 [App. 35a] and notice of appeal was filed on March 13, 1990 and an amended notice filed on March 16, 1990. [App. 35a].

Petitioner's brief was filed in the court of appeals on April 17, 1990 [App. 25a] in which eleven issues were presented and briefed.

In their answering brief Respondents Rollins and Haley attempted to divert the attention of the court of appeals away from the issues then before it by referring to Petitioner's earlier actions under the Tucker Act. [App. 36a] Unfortunately, they succeeded.

In an effort to prevent the court's attention from being diverted away from the real issues, Petitioner filed a "Request for Judicial Notice" [App. 37a] to assure that

the court of appeals would not inadvertently take any action trenching upon the exclusive jurisdiction of the United States Claims Court. Attention of the court was directed to the pending Tucker Act case in the Claims Court where those issues raised in the Rollins/Haley brief were under active review by a court of competent jurisdiction. [App. 39-40a]. The request for judicial notice was denied. [App. 7a].

On August 15, 1990 Judge Delaney filed his answer in the court of appeals in which he mis-stated significant facts relating to the case. [App. 41a]. Petitioner's motion to strike out and disregard those parts of the Judge's brief that misrepresented facts or authorities relative to the case was denied by the court of appeals. [App. 7a].

The court of appeals made no findings or analysis of any of the eleven issues presented but instead asserted "This is the

sixth lawsuit filed by Goad relating to the military retirement benefits." [App. 3a] and "Goad's campaign to prevent his former wife from receiving what is rightfully hers, which succeeds only in wasting scarce judicial resources and harassing innocent citizens must cease." [App. 7a].

In the district court, Respondents had sought a permanent injunction against the Petitioner which was specifically rejected. [App. 59a]. "[T]here's not a factual record yet on which to enjoin the plaintiff from filing further lawsuits againts your clients." Id. No cross-appeal was filed.

In disposing of this case the court of appeals sua sponte and without motion or notice granted the very injunction that had been rejected by the district court. [App. 7-8a].

Discussion:

Time for taking judicial notice has been authoritatively analyzed in 21 Wright and Graham, Federal Practice and Procedure, § 5110 (1977). That treatise states that judicial notice is proper in post-trial proceedings. It also observes that the provisions of Rule 201(f) the court "may" take notice at any time is limited by Rule 201(d), which states, "A court shall take judicial notice if requested by a party and supplied with the necessary information." Also, a court of appeals may take judicial notice for the first time on appeal. Gustafson v. Cornelius Co., 724 F.2d 75, 79 (CA8 1983); City of Dallas v. Moreau, 718 S.W.2d 776, 781 (Tex.App.-1986). The Advisory Committee Note to 201(f) indicates that judicial notice is appropriate "in the trial court or on appeal." United States v. Jones, 580 F.2d 219, 223 (CA6 1978); J. Weinstein & M. Berger, Weinstein's Evidence

¶ 201[06] (1976). Furthermore, federal courts, in appropriate circumstances, may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue. E. I. Du Pont Nemours & Co. v. Cullen, 791 F.2d 5, 7 (CA1 1986).

The rule is well established that without the filing of a cross-appeal, an appellee "may not attack the decree with a view either of enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below." Massachusetts Mutual Life Ins. Co. v. Ludwig, 426 U.S. 479, 481 (1976); Morley Construction Co. v. Maryland Casualty Co., 290 U.S. 484, 497 n.1 (1934); Canter v. American & Ocean Ins. Co., 3 Pet. (28 U.S.) 307, 318 (1830).

A proposal to amend Rule 38 was advanced in Martineau, Frivolous Appeals: The Uncertain Federal Response, 1984 Duke L. J. 845. Professor Martineau urged that the test of frivolity be an objective one, and that notice and an opportunity for hearing should be provided before the imposition of sanctions. In a second article co-authored by Professor Martineau, he undertook a thorough examination of the standard applied by the different circuits. The courts were divided into groups of aggressive circuits that regularly assessed sanctions, the reluctant circuits that almost never assessed them and the uncertain circuits that had not yet adopted a clear stance. It was concluded that the circuits should adopt predictable standards that would ensure like treatment of like cases. See: Martineau and Davidson, Frivolous Appeals in the Federal Courts: The Ways of the Circuits, 34 Amer. U. L. Rev. 603 (1985).

It has become standard procedure in the Fifth Circuit to sua sponte dismiss civil rights cases and impose sanctions on pro se appellants. See Foret v. Southern Farm Bureau Life Ins. Co., 918 F.2d 534, 539 (CA5 1990); Coghlan v. Starkey, 852 F.2d 806, 809 (CA5 1988). In Gabel v. Lynaugh, 835 F.2d 124 (CA5 1988) (per curiam) a panel of the court vented its frustration about the large number of frivolous appeals especially by prisoners acting pro se. The court observed "pro se civil rights litigation has become a recreational activity for state prisoners in our Circuit." 835 F.2d at 125 n.1. In Lay v. Anderson, 837 F.2d 231 (CA5 1988) (per curiam) the court taxed costs against a pro se prisoner and in so doing emphasized that the prisoner had "filed at least a half dozen petitions for writ of habeas corpus and several prisoner civil rights cases." Id. at 232.

In several cases neither the court of appeals nor the district court appear to have given a pro se appellant any notice at all of the possibility of sanctions, and yet the court of appeals has imposed them routinely. See, e.g., Simmons v. Poppell, 837 F.2d 1243 (CA5 1988) and Gabel v. Lynaugh, 835 F.2d 124 (CA5 1988). In these two cases prison officials were ordered to withdraw moneys from prisoners' trust fund accounts to satisfy a monetary sanction. In other cases prisoners have been warned that the courthouse door will be shut. Patterson v. Patterson, 808 F.2d 357, 358 (CA5 1986) and those doors have been shut. Stelly v. Commissioner, 804 F.2d 871 (CA5 1986) and of course this case. The Fifth Circuit has relied on its inherent power as a court rather that any rule or statute for the authority to impose some of these sanctions. Also relying on its "inherent power" the

Fifth Circuit has opted not to publish several dozen of its decisions imposing sanctions. The court has sanctioned many litigants without letting the public know what it was doing. At times the sanction decision has been published, but the prior notice or warning was neither published nor attached as an appendix. See: Cogan, The Inherent Power and Due Process Models in Conflict: Sanctions in the Fifth Circuit, 42 Sw.L.J. 1011, 1020 (1989).

Courts' sua sponte actions are strongly disfavored because they lack the procedural protections inherent in the adversarial process. See Flaherty v. Flaherty, 31 Cal. 3d 637, 652, 183 Cal.Rptr. 508, 517-8, 646 P.2d 179, 188-89 (1982). For example in Nietze v. Williams, 490 U.S. 319 (1989) this Court discussed the problems created by sua sponte action. Id. at 329-330. However this Court declined to address the "permissive scope,

if any," of the practice. Id. at 329 n.8. In Estelle v. Gamble, 429 U.S. 97 (1976), this Court reversed and remanded the sua sponte dismissal under Rule 12(b)(6) without commenting on the procedural aspects of the case. Id. at 108. However, Justice Stevens noted that this Court's action should not be taken as an endorsement of the practice since the question was not raised by the parties. Id. at 112 n.5 (Stevens, J., dissenting).

The use of injunctions against future claims as employed in this case, has troubled some of the circuits. See: DeNardo v. Murphy, 781 F.2d 1345, 1348 (CA9) cert. denied, 476 U.S. 1111 (1986) and Procup v. Strickland, 792 F.2d 1069, 1071 (CA11 1986) (en banc) (vacating injunction against party's filing without attorney); also Note: Preserving Pro Se Representation in an Age of Rule 11 Sanctions, 67 Tex.L.Rev. 351, 387 (1988).

Due process at the very least requires a court to notify, by means of an order to show cause, the person against whom it is considering the imposition of a sanction. See Roadway Express, Inc. v. Piper, 447 U.S. 752, 767 n.14 (1980), "The due process concerns posed by an outright dismissal are plainly greater that those presented by assessing counsel fees against lawyers." Id. Because their inherent powers are shielded from direct democratic control, however, the court must exercise these powers with restraint and control. 447 U.S. at 764.

Because the court below did not reach any of the eleven issues raised in the appeal nor express any opinion concerning them it is

> "appropriate to remand the case rather than deal with the merits of th[ose] question[s] in this Court."

Dandridge v. Williams, 397 U.S. 471, 476 n.6 (1970).

REASONS FOR GRANTING THE WRIT

The Fifth Circuit's refusal to address any of the issues raised in the appeal, its sua sponte issuance of an injunction, and its unexplained refusal to take mandatory judicial notice of a pending proceeding in the United States Claims Court all combine to present a situation in which that court has so far departed from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision to review this case by way of the requested writ of certiorari.

Respectfully submitted,

March 11, 1991.

ROLAND L. GOAD, Petitioner
310 Sara Lane
Huntsville, Texas 77340
(409) 291-2430

Opinion of the United States Court of Appeals, Fifth Circuit, entered on January 18, 1991, from which Petitioner seeks writ of certiorari in this Court. This case has been published and is found in the Federal Reporter (2nd), Volume 921, page 69 .

Roland Lee GOAD, Plaintiff-Appellant,

v.

John Andrew ROLLINS, et al., Defendants-Appellees

No. 90-2270

Summary Calendar

United States Court of Appeals,
Fifth Circuit

Jan. 18, 1991.

Before POLITZ, DAVIS and BARKSDALE, Circuit Judges.

POLITZ, Circuit Judge:

Roland Lee Goad invoked 42 U.S.C. §§ 1983, 1988 against multiple defendants after his incarceration for contempt of court. The district court dismissed the claims as to all defendants by granting motions for summary judgment on several grounds, including judicial immunity, failure to state a claim

on which relief can be granted, and failure to plead with the required specificity. Goad timely appeals. Finding this appeal to be frivolous we dismiss it, prohibit further like filings except as expressly specified, and remand to the district court for imposition of monetary sanctions against Goad.

Background

Roland and Mary Beth Goad were divorced in 1980. Among other things Mary Beth Goad was awarded 12/27 of Roland Lee Goad's Air Force retirement benefits. In January 1985, after refusing to pay the required portion of the retirement pay to his former wife, Goad was found to be in contempt of court and was placed in the Brazos County jail. Upon payment of $4,000 into the registry of court Goad was released in October of 1985.

The instant action is to recover actual and punitive damages for alleged violations of Goad's constitutional rights as a result of

the judgment of civil contempt and the subsequent incarceration. This is the sixth lawsuit filed by Goad relating to the military benefits. Sanctions previously have been awarded against Goad in both state and federal court as a result of his litigiousness. The state court ordered him to pay twice the costs of appeal because of his persistence in pursuing the matter in spite of adverse judicial rulings.

In 1987 Goad brought suit against the United States challenging the withholding, by the Air Force Accounting and Finance Center (AFAFC), of the portion of the payment due Mary Beth Goad. Goad v. United States, 661 F.Supp. 1073 (1987), affirmed in part, 837 F.2d 1096 (Fed.Cir.), cert. denied, 485 U.S. 906, 108 S.Ct. 1079, 99 L.Ed.2d 238 (1988). In that litigation the district court imposed monetary sanctions and forbade Goad to make any further filings

until the fine was paid, stating

> [t]his court cannot help but note and deplore the meanness of spirit with which this action is brought. Mr. Goad's persistent attempts to strip Mrs. Goad of the property granted to her by the divorce decree and to punish the AFAFC for honoring that decree can only be characterized as harassment. 661 F.Supp. at 1081.

On appeal we affirmed the imposition of sanctions. Goad, 837 F.2d at 1096.

In the case now before us, Goad named as defendants: (1) Mary Beth Goad; (2) John Rollins, Steven Haley, Pierce Stacy III, Alfred Davis, and Alfred Davis III, attorneys who represented Mrs. Goad at various times during the divorce proceedings in state court; (3) Elna Davis, an alleged coconspirator and a private individual who loaned Mrs. Goad money for legal fees; (4) Judge John Delaney, judge presiding over the contempt proceedings; (5) Allie Lewis, Bailiff to Judge Delaney; (6) Ron Miller, Sheriff of Brazos County; John Haskell (dismissed by

Goad), Leticia Wilkerson, Michael Fitzgerald, Ron Huddleston, John Godfrey, and Charles Blondeau, corrections officers, administrators, or other employees of the Brazos County sheriff's department; (8) Bill Cooley, Walter Wilcox, Billy Beard, and Milton Turner, Brazos County commissioners; and added by petition, Brazos County.

Goad alleges nine causes of action against the various defendants: (1) deprivation of liberty without due process of law; (2) deprivation of constitutional rights based on the failure of Brazos County commissioners to provide a safe and suitable jail; (3) violation of constitutional rights based on the failure of Sheriff Miller to provide a safe and suitable jail; (4) unlawful search and invasion of privacy based upon an alleged warrantless search of his personal effects by the sheriff; (5) wrongful execution, levy, and conversion; (6) malicious abuse of

civil process, conversion, and attempted extortion; (7) civil conspiracy and denial of his right to a jury trial and due process; (8) wrongful garnishment; and (9) wrongful civil proceedings and wrongful injunction. The trial court granted summary judgment in favor of all defendants and Goad timely appeals.

Analysis

In his appeal Goad asserts every conceivable challenge to the actions of the trial court. He contests everything, including the dismissal of the claims against Judge Delaney, his courtroom staff, and the corrections officials based on judicial immunity; the failure to find the actions of private attorneys to be state action; and the dismissal of counts as insufficient to support a claim of a deprivation of a constitutional right under section 1983. He even challenges the application of a local rule that views the

failure to respond to a motion for summary judgment as a representation of no opposition.

This appeal is patently frivolous and is dismissed as such. Loc.R. 42.2. The motions seeking to strike portions of Judge Delaney's brief and requesting that the court take judicial notice of adjudicative facts are denied. Goad's campaign to prevent his former wife from receiving what is rightfully hers, which succeeds only in wasting scarce judicial resources and harassing innocent citizens must cease. Toward that end, monetary sanctions will be imposed against him in favor of all appellees in accordance with Rule 38 of the Federal Rules of Appellate Procedure. We remand to the district court for the setting of the proper amount as to each appellee. We further direct all clerks of court under the jurisdiction of this court to refuse to accept any further filings

from Roland Lee Goad which in any way involve the payment of a portion of his Air Force retirement benefits to his former wife unless a judge of this court, or a judge of the forum district, first specifically authorized the filing.

APPEAL DISMISSED, Loc.R. 42.2; sanction order ENTERED; matter REMANDED for entry of further sanctions under Fed.R.App.P. 38.

Final Order in the trial court (S.D. Texas) entered on February 28, 1990, dismissing the civil rights suit filed by petitioner on September 8, 1986, Goad v. Rollins, Civil Action No. H-86-3433. [R. 9]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD,	§	
Plaintiff	§	Civil Action No.
	§	H-86-3433
v.	§	
	§	
JOHN ANDREW ROLLINS,	§	
Defendant.	§	

FINAL JUDGMENT

In accordance with the Court's Order, this action is DISMISSED, and all costs are adjudged against plaintiff.

This is a FINAL JUDGMENT.

SIGNED at Houston, Texas, this 22nd day of February, 1990.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Order in the trial court (S.D. Texas) entered on February 28, 1990, dismissing Civil Action H-86-3433, styled Goad v. Rollins. [R. 10-13].

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff,	§	
	§	CIVIL ACTION NO.
v.	§	
	§	H-86-3433
JOHN ANDREW ROLLINS, Defendant.	§	

ORDER

This action arises from the plaintiff's incarceration for civil contempt in the Brazos County Jail. Plaintiff has sued the defendants under 42 U.S.C. §§ 1983 and 1988 for alleged violations of plaintiff's constitutional rights stemming from his incarceration. Plaintiff has also asserted related pendent state law claims against the defendants. Plaintiff's Amended Petition (Docket Entry No. 94) alleges nine Causes of Action: (1) deprivation of liberty without due process and the common law tort of false impri-

sonment, naming Judge Delaney, Lewis, Miller, Wilkerson, Huddleston, Godfrey, Haskell amd Fitzgerald as defendants; (2) cruel and unusual punishment, denial of equal protection, and deprivation of his First, Fourth, Fifth, Eighth and Fourteenth Amendment rights based upon the Brazos County Commissioner's failure to provide a safe and suitable jail, naming Cooley, Wilcox, Beard and Turner as defendants; (3) violation of the same constitutional rights based upon the failure of the Brazos County Sheriff to maintain a safe and suitable jail, naming Miller as defendant; (4) unlawful search and invasion of privacy based upon the defendant sheriffs' and defendant jailers' search of his private papers and other personal effects without a warrant or probable cause, naming Miller, Godfrey, and Rollins as defendants; (5) wrongful execution, levy and conversion, naming Miller, Blondeau, and Rollins as defendants; (6) malicious

abuse of civil process, conversion, and attempted extortion, naming Rollins, Haley and Mrs. Goad as defendants; (7) civil conspiracy and denial of his right to jury trial and due process, naming Delaney, Rollins, Haley, and Mrs. Goad as defendants; malicious abuse of civil process and wrongful garnishment, naming Rollins and Haley as defendants; and (9) wrongful civil proceedings and wrongful injunction, naming Rollins, Mrs. Goad, Stacy, Alfred Davis, Alfred Davis III, and Elna P. Davis as defendants. Although the complaint also names Brazos County as a defendant and designates Judge Holmgreen to be served with process, it does not allege an independent cause of action against the County. The Court therefore assumes that plaintiff has sued the County for the acts of its employees, as alleged in the plaintiff's 1st, 2nd, 3rd, 4th and 5th causes of action, in their official capacities. See Brandon v. Holt, 105 S.Ct. 873, 878 (1985).

The Court has dismissed the following causes of action against the defendants:

(1) In its order of May 14, 1987, the Court granted the motion of Judge Delaney for dismissal of plaintiff's 1st and 7th causes of action. (Docket Entry No. 80)

(2) In its order of May 5, 1989, the Court granted the motion of Defendants Stacy, A. Davis, and A. Davis III for summary judgment as to plaintiff's 9th cause of action. (Docket Entry No. 133)

(3) In its order of February 13, 1987, the Court granted plaintiff's motion to dismiss defendant John Haskell. (Docket Entry No. 72)

(4) In its order of October 13, 1989, (Docket Entry No. 149) for reasons stated in open court on the record the Court

(a) granted the motion of defendants Rollins and Haley for summary judgment as to plaintiff's 4th, 5th, 6th, 7th, 8th, and 9th causes of action;

(b) granted the motion of defendants Lewis, Miller, Wilkerson, Huddleston, Godfrey, Blondeau, and Fitzgerald for summary judgment as to plaintiff's 1st, 4th and 5th causes of action;

(c) granted sua sponte summary judgment for defendants Cooley, Wilcox, Beard, and Turner as to plaintiff's 2nd cause of action.

(d) granted sua sponte summary judgment for defendants Brazos County and Holmgreen as to plaintiff's 1st, 2nd, 3rd, 4th, and 5th causes of action; and

(e) granted sua sponte summary judgment for defendant Mrs. Goad as to plaintiff's 6th, 7th and 9th causes of action.

Before the Court is defendant Miller's motion for summary judgment as to the plaintiff's third cause of action. More than 30 days have passed since the motion was filed with the Clerk of the Court on January 10, 1990. The Clerk's records reflect that the plaintiff has not responded to this motion. Pursuant to Local Rule 6.E failure to timely respond to an opponent's motion is taken as a representation of no opposition. After careful consideration, the defendant's motion for summary judgment as to the plaintiff's third cause of action is GRANTED. Since plaintiff has no remaining causes of action against the defendants, this case is DISMISSED.

SIGNED at Houston, Texas, this 22nd day of February, 1990.

(signed)
SIM LAKE
UNITED STATES DISTRICT JUDGE

Protective Order in the trial court (S.D. Texas) entered on March 11, 1987, excusing Judge Delaney from any requirement to respond to Petitioner's motion for partial summary judgment. [R. 615]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD Plaintiff	§	CIVIL ACTION NO.
V.	§	H-86-3433
JOHN ANDREW ROLLINS ET AL.	§	

PROTECTIVE ORDER

CAME ON for consideration the Motion for Protective Order of Judge John Delaney filed pursuant to Rule 26(c), Federal Rules of Civil Procedure and pursuant to the dictates of Elliot v. Perez, 751 F.2d 1472 (5th Cir. 1985).

The Court finds that said Motion is meritorious and should be granted and it is therefore

ORDERED that all discovery, including any requirement to respond to Plaintiff's Motion

for summary Judgment, pertaining to Judge Delaney be and is hereby stayed pending a ruling by this Court on the immunity defenses raised by Defendant Judge.

SIGNED and ORDERED this the 11 day of March, 1987.

s/Gabrielle K. McDonald

U. S. District Judge

Order in the trial court (S.D. Texas) on May 14, 1987, dismissing Defendant Judge John Delaney based on his claim of judicial immunity. [R. 461-463]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD, Plaintiff,	§	C.A. NO.
v.	§	H-86-3433
JOHN ANDREW ROLLINS, et al., Defendants.	§	

ORDER

Pending before the Court is the Motion to Dismiss filed by Judge John Delaney. Having considered the arguments of the parties and the applicable law, the Court is of the opinion that the Motion should be GRANTED.

A judge who acts within his or her judicial jurisdiction enjoys absolute immunity from liability. Stump v. Sparkman, 435 U.S. 349, 98 S.Ct. 1099 (1978). In the Fifth Circuit, there are four factors to consider when determining whether an act is "judicial": (1)

whether the act complained of is a normal judicial function; (2) whether the acts occurred in the courtroom or appropriate adjunct spaces such as the judge's chambers; (3) whether the controversy arose out of a case pending before the court; and (4) whether the acts arose directly out of a visit to the judge in his official capacity. Adams v. McIlheny, 764 F.2d 294, 297 (5th Cir. 1985).

Plaintiff had been ordered to pay a portion of his military retirement benefits to Mary Beth Goad pursuant to a divorce decree. He attempted to have the division of his military retirement benefits invalidated on appeal. These appeals were rejected at every level from the Texas Supreme Court - Goad v. Goad, 22 Tex. Sup. Ct. J. 244 (Feb. 2, 1984), to United States Supreme Court - Goad v. Goad, __U.S.__, 105 S.Ct. 95 (1984) (writ of certiorai denied).

Mary Beth Goad brought an action in state court to enforce the provision of the divorce decree awarding her a portion of Plaintiff's military benefits. A trial on Ms. Goad's Motion for Contempt was held before the Honorable John Delaney, 272nd Judicial District Court of Brazos County, Texas. Mr. Goad was committed to jail upon Judge Delaney's verbal order on January 3, 1985. The Order was reduced to writing, executed, and filed on January 7, 1985.

Based on the facts of this case, the actions of Judge Delaney were judicial acts performed within his jurisdiction. Defendant's use of the contempt power is a normal judicial function. Moreover, Plaintiff's contacts with Judge Delaney occurred while Defendant was presiding in his official capacity. Consequently, the Defendant is immune from suit in this action.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that Defendant's Motion to Dismiss be and hereby is GRANTED.

The Clerk shall file this Order and provide a true copy to counsel for all parties.

DONE at Houston, Texas, this 14 day of May 1987.

(signed)
GABRIELLE K. McDONALD
UNITED STATES DISTRICT JUDGE

Order in the trial court (S.D. Texas) on May 14, 1987, denying Petitioner's Motion For Partial Summary Judgment. [R. 459]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD,	§	
	§	CIVIL ACTION NUMBER
VS	§	H-86-3433
	§	
JOHN ANDREW ROLLINS,	§	
ET AL	§	

O R D E R

On the 14 day of May , 1987, came on to be heard the Motion for Partial Summary Judgment of Plaintiff Roland Lee Goad, and the Court having considered said Motion and the summary judgment evidence and being fully advised is of the opinion and finds that said Motion is without merit and should be in all things denied. It is therefore,

ORDERED, ADJUDGED and DECREED that Plaintiff's Motion for Partial Summary Judgment be and the same is hereby denied.

SIGNED the 14 day of May, 1987.

s/Gabrielle K. McDonald
U.S. DISTRICT JUDGE

Form Order in the trial court on April 17, 1989, striking Petitioner's pleadings. (immaterial formal matters are omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ORDER STRIKING PLEADING(S)

The Clerk has filed your Plaintiff's Motion for Leave to Amend; Plaintiff's Motion for Amended Docket Control Order, however it is deficient in the area(s) checked below:

* * * * *

7. XXX Other: Counsel for Pltf must withdraw in order for Pltf to proceed pro se.

The Clerk is hereby ORDERED to strike the above instrument(s) from the record and notify counsel of such action.

Dated: 4/13/89

s/ Sim Lake
U.S. DISTRICT JUDGE

Conference Minutes and Order in the trial court, Cause No. H-86-3433, entered on hearing of May 5, 1989. (immaterial formal matter are omitted)

Date: 5-5-89 CONFERENCE MINUTES AND ORDER

Time: 3:00p/3:20p

At the conference held today these rulings were made:

The Court GRANTED the motion for summary judgment of defendants Davis, Davis and Stacy (#113) for failure to state a cause of action and for lack of subject-matter jurisdiction.

The Court DENIED plaintiff's motion for leave to amend complaint. (#122).

A new docket control order was entered separately.

The Clerk will file these Minutes and Conference Order.

s/Sim Lake
U. S. District Judge

Relevant excerpts from Petitioner's brief filed in the Fifth Circuit on April 17, 1990, No. 90-2270, Goad v. Rollins.

The Court has jurisdiction over this appeal pursuant to the provisions of 28 U.S.C. § 1291.

There are eleven issues presented in this appeal. They are:

[I] Was it an abuse of discretion for the trial court to enter a protective order excusing Defendant Judge JOHN DELANEY from answering Plaintiff's motion for partial summary judgment?

[II] Did the trial court err, as a matter of law, by dismissing Defendant Judge JOHN DELANEY based on his claim of judicial immunity?

[III] Did the trial court err, as a matter of law, by denying Plaintiff's motion for partial summary judgment without making anf findings of fact or conclusions of law?

[IV] Was it reversible error for the trial court to dismiss Defendants STACY, A. DAVIS and A. DAVIS III on the basis that Plaintiff had failed to state a claim?

[V] Did the trial court reversibly err when it ordered Plaintiff's pleadings stricken because he attempted self-representation?

[VI] Was it an abuse of discretion for the trial court to deny Plaintiff leave to amend without giving any reason for such denial?

[VII] Did the trial court err, as a matter of law, by failing to find "state action" with respect of the allegations concerning Defendants ROLLINS and HALEY?

[VIII] Did the trial court err, as a matter of law, by dismissing Defendants LEWIS, MILLER, WILKERSON, HUDDLESTON, GODFREY, BLONDEAU and FITZGERALD on the basis of judicial immunity?

[IX] Did the trial court err, as a matter of law, when it sua sponte, and without prior notice, granted summary judgment dismissing Defendants BRAZOS COUNTY, COOLEY, WILCOX, BEARD and TURNER on the basis of judicial immunity?

[X] Did the trial court err, as a matter of law, when it sua sponte, and without prior notice, granted summary judgment dismissing Defendant ELNA DAVIS?

[XI] Did the trial court err, as a matter of law, when it dismissed count three of Plaintiff's complaint and granted summary judgment in favor of Defendant MILLER solely because Plaintiff had not responded to the motion for summary judgment filed by MILLER after all other claims had been dismissed and pleadings closed?

i

Course of Proceedings and Disposition in Court Below

3. Appellant (GOAD) instituted this action on September 8, 1986 [R. 877], asserting nine causes of action against Brazos County and twenty individuals. Sommoses were issued and served. Fifteen individual defendants and Brazos County filed an answer on October 7, 1986. [R. 828]

4. Judge John Delaney of the 272nd District Court of Brazos County moved for dismissal as to him based on his claim of judicial immunity. [R. 821]. Defendant ELNA DAVIS answered [R. 862] and Mary Beth Goad answered [R. 729] and has been dropped.

5. On February 9, 1987 GOAD moved for partial summary judgment on the question of liability supported by sixty-seven exhibits aggregating to 248 pages. [# 56 & 57, R. 670-703].

6. On February 13, 1987, Judge Delaney moved for protective orders [R. 648] seeking to be relieved of any requirement to file an answer to GOAD's motion for partial judgment.

GOAD filed an answer to his request for protective orders [R. 634] pointing out that the Judge was asking for relief that goes far beyond the scope of Rule 26(c) and suggested that the Court consider his motion as a cross-motion for summary judgment and proceed to consider the factual matters contained in the exhibits on file with the Court. [R. 640].

7. The requested protective order was granted by the Court on March 11, 1987. [R. 615].

8. In order to avoid a conflict of interest based on dual representation, Brazos County filed a stipulation in which it acknowledged that it was the true party in interest as to the individual defendants ALLIE W. LEWIS, RON MILLER, LETICIA WILKERSON, RON HUDDLESTON, JOHN GODFREY, CHARLES R. BLONDEAU, MICHAEL A. FITZGERALD, BILL COOLEY, WALTER WILCOX, BILLIE E. BEARD, and MILTON TURNER as to which GOAD complained in his original compl-

aint and were all within the scope of their official duties with regard to the acts complained of. [R. 626].

9. On May 14, 1987, the trial court dismissed Judge Delaney based on his claim of judicial immunity [R. 461] and denied the motion for partial summary judgment but made no findings of fact or law as to the evidence that had been presented in the motion. [R. 459].

10. On December 7, 1987, GOAD filed an amended complaint essentially the same as the original complaint except it added Brazos County specifically by name as a defendant. [R. 401].

11. On December 30, 1987, Brazos County filed its original answer to the amended complaint adopting by reference the answer it had previously filed on behalf of its employees. [R. 396].

12. On January 9, 1989, Defendants STACY, A. DAVIS and A. DAVIS III moved the court to extend the dispositive motion cut-off date. [R.283] which was stricken by the Court. [R. 279]. Defendants also moved for summary judgment [R. 287-316] but the motion was not served on GOAD [R. 226, ¶ 3] The record contains both original and duplicate copies of unsigned instruments that appear to be the moving papers of the defendants: [R. 287/306, 288/307, 289/308, 290/309, 291/310, 292/311, 293/312, 294/313, 295/314, 296/302, 297/303, 298/304, 299/305, 300/315, 301/316]. Defendants also assert, incorrectly, that GOAD's action against ROLLINS is one for malpractice. [R 287, ¶ 1, 306]. An affidavit asserts that ROLLINS was in the employ of the Defendants from August 3, 1981 until April 15, 1982 [R. 300, 315] however movant's counsel asserts that ROLLINS was in the employ of his clients for a period of approximately

seventeen (17) days. [R. 287, 306]. It should be noted that the action complained of in GOAD's action was filed on October 19, 1981. [# 56, Ex. 50, certified copy]. The indemnity bond was co-signed by Defendant "FRED" DAVIS [# 56, exhibit 52, certified copy]. From the record it may be adduced that Defendant ROLLINS remained in the employ of Defendants for 178 days after the charging instrument was filed on October 19, 1981.

13. On March 29, 1989 GOAD moved the court for leave to amend his complaint in order to state with more particularity each of his claims against the defendants, to align his claims to the posture they would be presented to the jury and to add claims for damages for those events that had occurred since the filing of the original petition. [R. 259]. On May 5, 1989, the trial court denied GOAD's request to amend without giving any explanation or reason. [# 154, p. 7, line 18].

14. On March 29, 1989, GOAD filed notice with the Court and all counsel that he would, effective immediately, undertake self-representation. [R. 262]. The notice was stricken. [R. 255].

15. On May 5, 1989 the trial court dismissed Defendants STACY, A. DAVIS & A. DAVIS III for failure of Plaintiff to state a claim (R. 12(b)(6)) [# 154, p. 4, line 25]; however in its order of February 28, 1990, the dismissal was characterized as one for summary judgment. [R. 12].

16. Defendants ROLLINS and HALEY filed motion for summary judgment on July 7, 1989. [R. 188] and on August 11, 1989, more than a month after the close of the pleadings, Defendants LEWIS, MILLER, WILKERSON, HUDDLESTON, GODFREY, BLONDEAU and FITZGERALD moved for dismissal or in the alternative, for summary judgment. [R. 186].

17. GOAD responded by filing his answers including memoranda of law and an affidavit controverting Defendants' claims. [R. 23-76; 90-112; 114-185]

18. On September 19, 1989, more than two months after the close of the pleadings, Defendant ELNA DAVIS moved for judgment on the pleadings [R. 88] which was stricken by the Court [R. 77].

19. GOAD filed a proposed Joint Pretrial Order on October 6, 1989. [# 148, R.22].

20.The trial court conducted "docket call" on October 13, 1989 after which it entered orders:

a. dismissing Defendants ROLLINS and HALEY on the absence of state action. [#150, p. 2, lines 20-25]

b. dismissed counts four and five for failure to state a claim and failure to allege a conspiracy [#150, p. 2] and dismissing counts six, seven, eight, and nine for failure to

show state action [#150, p. 3] and granted summary judgment in favor of Defendants ROLLINS and HALEY.

c. Dismissed Defendants LEWIS, MILLER, WILKERSON, HUDDLESTON, GODFREY, BLONDEAU and FITZGERALD on the ground of judicial immunity. [#150, p. 4, line 5]

d. Sua sponte, and without advance notice, granted summary judgment to Brazos County, COOLEY, WILCOX, BEARD and TURNER on the basis of judicial immunity. [#150, p.6, lines 4-9].

e. Sua sponte, and without prior notice, granted summary judgment in favor of Defendant ELNA DAVIS. [#150, p.7, lines 18-20].

20. On January 9, 1990, pursuant to the court's instruction, Defendant MILLER moved for summary judgment on the remaining count in GOAD's complaint [R. 14] which the court granted on February 22, 1990 because "[t]he Clerk's records reflect that the Plaintiff has not responded to this motion. Pursuant to

Local Rule 6.E failure to timely respond to an opponent's motion is taken as representation of no opposition." [R. 13].

21. A final order dismissing the case was entered by the Clerk on February 28, 1990. [R. 9] and notice of appeal was filed on March 13, 1990 [R. 6] and an amended notice of appeal was filed on March 16, 1990. [R. 3].

Relevant excerpts from the ROLLINS/HALEY brief filed in the Fifth Circuit on June 15, 1990, No. 90-2270, Goad v. Rollins.

[Page 3]

In one previous suit, Judge David Hittner dismissed Goad's case and imposed sanctions against him for (1) the frivolous nature of the suit; (2) the "meanness of spirit" with which the action was brought; (3) Plaintiff's intent to harass evidenced by the "persistence and pervasiveness of Mr. Goad's litigation campaign," (specifically referring to the case presently before this Court); and (4) deprivation of the Court's "time desperately needed for legitimate complaints." Goad v. United States, 661 F.Supp. 1073 (S.D. Tex. 1987), aff'd in part, vacated in part, and remanded, 837 F.2d 1096 (Fed.Cir. 1987), cert. denied, 485 U.S. 906 (1988). In another of his lawsuits, the Sixth Court of Appeals also imposed sanctions against Goad, noting that the suit was the sixth filed by Goad ...

Relevant portions of the "Request for Judicial Notice" filed by Petitioner in the Fifth Circuit On June 28, 1990, No. 90-2270, Goad v. Rollins:

Appellant, ROLAND LEE GOAD, respectfully requests the Court, pursuant to Rule 201(d) of the Rules of Evidence, to take mandatory judicial notice of adjudicative facts reflected in the attached documentation.

DOCUMENTATION

Original Complaint, Case No. 90-72C, styled Goad v. United States, filed in the United States Claims Court on January 22, 1990.

Clerk's notice assigning Judge Gibson to case, January 26, 1990

Notice joining Mary Beth Goad as a party, served on February 23, 1990.

ADJUDICATIVE FACTS

Request the Court notice "Basis For Claims" set out in the Original Complaint.

PURPOSE OF NOTICE

To assure that this Court does not inadvertently take any action trenching upon the exclusive jurisdiction of the United States Claims Court.

CONTROLLING PRECEDENT

The United States Claims Court is a court of national jurisdiction and in cases properly before it, it is, to all intents and purposes sitting in the State where the action arose or where the claim accrued. United States v. Borcherling, 185 U.S. 223, 234 (1902).

Relevant portion of the Original Complaint Case No. 90-72C, styled Goad v. United States, filed in the United States Claims Court on January 22, 1990 and submitted to the Fifth Circuit as an annex to the "Request For Judicial Notice" filed on June 28, 1990

BASIS FOR CLAIMS

14. The divorce decree (Exhibit A) does not qualify as a "court order" under the USFSPA.

15. Plaintiff's pay is exempt from execution, garnishment, levy or seizure in satisfaction of a community property claim.

16. Congress' declaration that the USFSPA is to apply to events which occurred before the effective date of the Act represents an attempt to retroactively apply new statutory language and to thereby annul a prior decision of the United States Supreme Court. This was an assumption, by Congress of a court of last resort in contravention of the principles of separation of powers.

17. Congress has acted in excess of its authority by delegating to state courts the

authority to determine whether or not to apportion retired pay as community property. Mary Beth Goad does not "own" a portion of Plaintiff's retired pay.

18. The "direct pay" procedures of the Air Force has deprived Plaintiff of his pay without due process of law.

19. The USFSPA is a special law enacted for the avowed purpose of allowing former spouses to receive court-awarded payments directly from the military finance centers without having to resort to periodic state garnishment procedures and therefore violates the equal protection of the law as mandated by the Fifth Amendment of the United States Constitution. Until the Air Force has been served with "legal process" issued by a court of competent jurisdiction, there exists no lawful authority for the Government to pay funds firectly to Mary Beth Goad out of the Department of Defense Military Retirement Fund.

Relevant excerpts from Judge Delaney's brief filed in the Fifth Circuit on August 15, 1990, No. 90-2270, Goad v. Rollins.

[page 4] In March 1983, Mrs. Goad filed a Motion for contempt in Appellee's court seeking criminal sanctions for Appellant's refusal to deliver the 12/27th share of his military retirement benefits under the divorce decree from the time of its effect. [R. #136, Tab 4.]

On December 20, 1984, Mrs. Goad file an amended Motion for Contempt, seeking civil sanctions only, requesting Appellant's confinement in jail until the delinquency in payment of benefits was delivered and brought current.

On January 3, 1985, Appellee Judge DeLaney adjudged Appellant in contempt. [R. # 136, Tab 6, p.129.] On January 7, 1985, Appellee signed a Judgment of Contempt and Order of Commitment holding Goad in civil contempt. The Order directed that Appellant be incarcerated

in the Brazos County jail until payment into the court registry of Mrs. Goad's 12/27th share of all Air Force retirement benefits received from and including January 20, 1981 to December 20, 1984, in the amount of $30,099.42. Appellant also assessed all court costs as well as $10,000.00 in attorney's fees against Appellant. [R. #136, Tab 7.]

On January 10, 1985, Appellant filed for writ of habeas corpus in the Texas Supreme Court seeking release from confinement as well as challenging the validity of the divorce decree and the January 7, 1985 Judgment of Contempt. On June 5, 1985, the Texas Supreme Court denied Appellant relief and remanded him to custody. He had been released on bond during the time pending final determination. Ex Parte Goad, 690 S.W.2d 984 (Tex. 1985).

On August 29, 1985, Mrs. Goad filed a First Amended Motion for Enforcement of the court's order in Appellee's Court, bringing a second civil contempt action, this time to enforce

payment of military benefits between the time of the first contempt (December 1984) and April, 1985. [R. #136, Tab. 8.]

On September 13, 1985, hearing on the motion was held in Appellee's Court. Appellant refused to endorse three U.S. Treasury checks for retirement benefits for July, August, and September, 1985, totaling $2,813.00 obtained by Mrs. Goad's attorney through subpoena duces tecum. [R. #136, Tab 12, pp.69-77.]

At that time Appellee Judge DeLaney signed a Judgment of Contempt and Order for Commitment, holding Appellant in civil contempt and ordering incarceration in Brazos County jail until payment of military retirement benefits due Mrs. Goad between December 21, 1984 and April 15, 1985, as well as awarding Mrs. Goad $1500 in attorney's fees. [R. #136, Tab 13.]

Relevant portions of Petitioner's motion in the Court of Appeals to strike out and disregard parts of Judge Delaney's brief that misrepresented facts or authorities regarding the case. Case No. 90-2270, Goad v. Rollins, motion filed Aug. 28, 1990.

The Brief of Appellee, JOHN DELANEY, so departs from the realities of this case that your Appellant is constrained to respectfully move this honorable Court to strike out and disregard those portions of his brief that misrepresent the facts or laws that relate to this case.

3. On page 2 of his brief, the Judge mischaracterizes the action in his court as a "divorce action":

> The actions stem from a divorce action involving Appellant and his ex-wife. He contends that the following rights were denied as a result of proceedings involving divorce..."
>
> "He is also challenging the district court's decision to protect Judge Delaney from discovery..."

4. The Judge correctly set forth twelve typewritten lines of text from Appellant's main brief (p. 3), but managed to state

non-facts in those parts outside quotation marks. This is a civil rights action - not a divorce action; and the proceedings in Judge Delaney's court did not involve "divorce action."

5. The Judge presents five pages (pp 3-7) of gratuitous "facts" mostly at variance with the facts of this case. * * * * *

c. On page 4, the Judge glosses over the fact that the falsified document that bears his signature and is dated January 7, 1985 is not a "court order." See page 45 of the GOAD brief. Of much more serious import, Judge Delaney must not be allowed to offer that document to this Court and to claim that it is valid. Falsification of the "order" was a criminal act, and presenting it to this court with the intention that it be taken as a valid order is a further criminal act. See GOAD's first reply brief, ¶ 22, p. 13.

Relevant excerpts from "Original Petition" filed Sep. 8, 1986, styled Goad v. Rollins (Doc. # 1, R-877-911)

"A jury trial is demanded."

Jurisdiction of this Court is invoked pursuant to and in accordance with the provisions of Title 28, United States Code, Sections 1331 and 1343. This action arises under Title 42, United States Code, Sections 1983 and 1988 and the Constitution of the United States, in particular but not limited to the First, fourth, Fifth, Sixth, Eighth and Fourteenth Amendments thereto. In addition, pendent jurisdiction is invoked over related state law claims. ...

14. Plaintiff alleges that Defendants JOHN DELANEY, ALLIE W. LEWIS, RON MILLER, RON HUDDLESTON, LETICIA WILKERSON and JOHN HASKELL, while acting under color of their offices, but without constitutional or legal authority, and in violation of Plaintiff's constitutional rights, deprived Plaintiff of his liberty without due process of law. Defendants, acting

pursuant to authority granted them by virtue of their offices, but in total disregard of their responsibility and jurisdiction, deliberately, wrongfully, unlawfully, maliciously, willfully and oppressively, without any reasonable or probable cause, and in utter disregard of Plaintiff's legal and constitutional rights, placed Plaintiff under arrest and against his will without legal process and illegally and unlawfully confined him in the Brazos County Jail.

15. On January 3, 1985, A.D., in the County of Brazos, State of Texas. JOHN DELANEY, did then and there as a public servant, to wit: Presiding Judge of the 272nd District Court of Brazos County, Texas, and with intent to harm Plaintiff, intentionally and knowingly commit an act relating to his office and employment that constituted and unauthorized exercise of his official power, to wit: JOHN DELANEY, while acting under color of his office,

knowingly acting in clear and complete absence of legal authority, did then and there, at approximately 2:30 o'clock p.m. on the Third Day of January 1985, A.D., verbally order the arrest and confinement of the Plaintiff in the Brazos County jail without probable cause or reason to believe that Plaintiff had committed or was about to commit any criminal offense in his presence and without a mittimus authorizing the arrest or confinement of Plaintiff in the Brazos County jail knowing his action to be unlawful.

16. On January 3, 1985, A.D., in the County of Brazos, State of Texas, ALLIE W. LEWIS, did then and there as a public servant, to wit: Bailiff of the 272nd District Court of Brazos County, Texas, acting under color of his office and employment, intentionally subject Plaintiff to mistreatment, arrest, detention, and search that the said ALLIE W. LEWIS knew was unlawful. Specifically, the said ALLIE W.

LEWIS, acting under color of his office and without any written authority or reasonable or probable cause to believe that a criminal offense had been committed by the Plaintiff, did then and there arrest Plaintiff and deliver him to the Brazos County jail, knowing such arrest to be unlawful.

17. On January 3, 1985, A.D., in the County of Brazos, State of texas, LETICIA WILKERSON, did then and there as a public servant, to wit: Corrections Officer at the Brazos County jail, Brazos County, Texas, acting under color of her office and employment, intentionally subject Plaintiff to mistreatment, arrest, detention and search that the said LETICIA WILKERSON knew was unlawful. Specifically, the said LETICIA WILKERSON, acting under color of her office, did then and there, at approximately 3:00 o'clock, p.m., on Jaunuary 3, 1985, A.D., without any written authority or reasonable or probable cause to believe that a criminal

offense had been committed by the Plaintiff, confine Plaintiff in the Brazos County jail without a warrant, knowing her action was unlawful. ...

19. On January 7, 1985, A.D., in the County of Brazos, State of Texas, LETICIA WILKERSON, did then and there as a public servant, to wit: Corrections Officer at the Brazos County jail, Brazos County, Texas, acting under color of her office and employment intentionally subject Plaintiff to mistreatement, arrest, detention and search that the said LETICIA WILKERSON knew was unlawful. Specifically, LETICIA WILKERSON, acting under color of her office, unlawfully arrested Plaintiff inside the Brazos County Jail and falsified the capias to indicate Plaintiff had been initially arrested on January 7, 1985, A.D., at the 272nd District Court, knowing such report to be false; when in fact the falsified arrest report was used to perpetuate the earlier unlawful

arrest the said LETICIA WILKERSON had made on January 3, 1985, A.D., the said LETICIA WILKERSON knowing her action to be unlawful. ...

30. During the period from January 3, 1985, A.D., until October 21, 1985, A.D., the named defendants, BILL COOLEY, WALTER WILCOX, BILLY E. BEARD and MILTON TURNER, did then and there as public servants, to wit: Commissioners of Brazos County, Texas, and acting under color of their offices, did intentionally and in reckless and callous disregard of Plaintiff's constitutional rights, intentionally and knowingly refrain from performing duties that were imposed on them by law, to wit: Defendants failed and neglected to provide a safe and suitable jail in Brazos County and failed to cause the county jail to be maintained in good sanitary condition, properly ventilated, heated and lighted, and kept in good repair ... while Plaintiff was incarcerated therein. ...

Selected relevant excerpts from answer of Brazos County filed on October 7, 1986, CA H-86-3433, styled Goad v. Rollins, Doc. # 19. R. 828-853.

14. Defendants ALLIE W. LEWIS, RON MILLER, RON HUDDLESTON, and LETICIA WILKERSON admit only that while acting under color of their offices, Plaintiff was put under arrest and confined in the Brazos County jail. ...

15. It is admitted upon information and belief that JOHN DELANEY, presiding Judge of the 272nd Judicial District Court of Brazos County, Texas, did on January 3, 1985, verbally order the arrest and confinement of the Plaintiff in the Brazos County jail. ...

16. Defendant ALLIE W. LEWIS admits only that on January 3, 1985, while under color of his office and employment he did, pursuant to Court Order, arrest Plaintiff and deliver him to the Brazos County jail. ...

17. Defendant LETICIA WILKERSON admits only that on January 3, 1985, while acting under color of her office and employment

did at approximately 3:00 o'clock p.m., confine Plaintiff in the Brazos County jail. ...

19. Defendant LETICIA WILKERSON admits only that on January 7, 1985, while acting under color of her office and employment and pursuant to authority granted to her by virtue of her office, she did serve a capias on the Plaintiff while Plaintiff was incarcerated at the Brazos County jail. ...

30. Defendants, BILL COOLEY, WALTER WILCOX, BILLY E. BEARD and MILTON TURNER admit only that from January 3, 1985 until October 21, 1985, they were serving as Commissioners of Brazos County, Texas, and that Plaintiff was incarcerated in the Brazos County jail. It is further admitted that at the time of the Plaintiff's incarceration, an exercise area was not provided due to the fact that the new Brazos County jail facility was under construction ... It is further admitted that a day

room facility was not provided while the Plaintiff was incarcerated in the Brazos County jail. ...

First Stipulation of Facts filed by Brazos County on March 2, 1987. (immaterial formal matters are omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROLAND LEE GOAD	§	
	§	CIVIL ACTION NUMBER
VS	§	H-86-3433
	§	
JOHN ANDREW ROLLINS,	§	
ET AL	§	

FIRST STIPULATION OF FACTS

It is hereby stipulated by Brazos County, the true party in interest as to the individual Brazos County Defendants, that the acts of Defendants, ALLIE W. LEWIS, RON MILLER, LETICIA WILKERSON, RON HUDDLESTON, JOHN GODFREY, CHARLES R. BLONDEAU, MICHAEL A. FITZGERALD, BILL COOLEY, WALTER WILCOX, BILLY E. BEARD, and MILTON TURNER, of which ROLAND LEE GOAD complains in Plaintiff's Original Petition were all within the scope of their official duties.

Brazos County hereby stipulates that it will not attempt to show that the above-listed employees were not acting within the scope of their official duties with regard to the acts complained of in Plaintiff's Original Petition. This Stipulation is limited to the specific actions of the above-listed Brazos County employees as alleged in Plaintiff's Original Petition.

This Stipulation has heretofore been submitted to the Commissioner's Court of Brazos County, Texas, on the 16th day of February, 1987, for approval.

Portions of the transcript of proceedings in the trial court on May 5, 1989, Goad v. Rollins, H-86-3433. Doc. No. 154

[page 4] THE COURT: The next item according to my notes is docket entry 113, which is the Motion to Dismiss of defendants Pearce P. Stacy III, Alfred Davis and Alfred W. Davis III.

MR. GIESSEL: That is a motion I filed, Your Honor.

THE COURT: Yes. I've read the motion and I'm going to grant the motion. The motion relies primarily on the absence of privity between the plaintiff and your clients. If you -- although the docket entry 94, which is the plaintiff's last pleading, is not an example of clarity as to legal theory, it appears to allege misuse of legal process more than attorney malpractice.

MR. GIESSEL: I concede that, but I think it would fall under the same cases.

THE COURT: To the extent that it attempts

to allege attorney malpractice, the motion is granted for want of privity. To the extent that it alleges abuse of the judicial system or egregious malicious prosecution, I'm going to grant your motion because, number one, there is no privity. I don't find any state action to come within 1983. And under the Fifth Circuit's recent opinion in Cisk v. Levings, L-e-v-i-n-g-s-, it clearly does not meet the standards of egregiousness that is sufficient for a tort of this nature to constitute a constitutional violation. So for all those reasons, I'm going to grant your motion. I think it's more properly a motion under 12 (b) (6) than 12 (b) (1) and it will be so noted.

MR. GIESSEL: Very well, Your Honor. May I point out to the Court that additional relief that I suggested to the Court is some injunctive relief to prevent the filing of further lawsuits litigating these same issues,

because we have been all over the state. I think I showed a listing of 18 different lawsuits had been filed on the same matter, and I wanted to put it to an end by suggesting to the Court injunctive relief against the filing of further lawsuits growing out of the same matter.

THE COURT: I don't think I'm in a position, since I've dismissed you, to give you that relief. I think I would be more--it might be appropriate to grant that relief once this case were over with, but there's not a factual record yet on which to enjoin the plaintiff from filing further lawsuits against your clients.

Relevant excerpts from Petitioner's affidavit opposing motions for summary judgment, Doc. # 146, CA H-86-3433, styled Goad v. Rollins, filed October 6, 1989.

2. On June 26, 1981, the United States Supreme Court held that retired pay was not subject to attachment for satisfaction of community property awards and that this prohibition was not to be circumvented by the simple expedient of an off-setting award of some other property. McCarty v. McCarty, 453 U.S. 210, 228 n.22 (1981).

3. On October 19, 1981, despite the command of McCarty, Defendant Rollins, acting on behalf of Mary Beth Goad, filed a lawsuit against Affiant seeking to relitigate the property division aspects of the divorce so as to obtain an off-setting award of some other property for the expected value of Mary's purported interest in Affiant's "Air Force Retirement benefits." (Exhibit 1). Concurrent with the lawsuit, Mary Beth Goad requested, and was granted injunctive relief that

encumbered all Affiant's tangible property. (Exhibit 2).

4. On March 8, 1983, Defendant Rollins, on behalf of Mary Beth Goad, filed a motion for contempt against Affiant. (Doc. # 136, exhibit 4). The motion was not served on Affiant. Amended motions were filed on October 31, 1984 and on November 21, 1984 and neither of those motions were ever served on Affiant.

5. Immediately after Affiant perfected his right to a jury trial on the criminal charges contained in the amended motions, Defendant Rollins amended the motion for the third time removing all demands for criminal punishment and instead sought only civil coercion ... for one single act of civil disobedience occurring at a date fourteen days <u>after</u> the show cause order was issued and served. (Doc. 136)

6. A contempt trial was held on January 3, 1985 without a jury and without removing the case from the jury docket and Affiant was

declared to be guilty of civil contempt for one act of conduct from January 30, 1981 until January 3, 1985, inclusive. Judge Delaney verbally ordered Affiant jailed until $30,800.42 was paid into the registry of the court (Not $30,099.42 as asserted by Defendant Rollins). (Doc. 136, Ex. 6, p. 129, lines 14-25). The verbal order did not include any attorney fees award as insisted by Defendant Rollins Id. at lines 21-23. The particular verbal order has never been reduced to writing however a falsified order was entered in the minutes of the 272nd District Court on January 7, 1985.

7. The judgment of contempt and order of commitment dated January 7, 1985 has been falsified in several significant ways so as to make it appear that the contempt trial was held on January 7, 1985.

8. Annexed to this affidavit, and identified as exhibit 3, is a copy of the booking slip of

the Brazos County Sheriff's Office showing that Affiant was arrested at the 272nd District Court by Officer Lewis and received in the Brazos County Jail at 3:00 p.m. on January 3, 1985 by J. Haskell, Receiving Jailer, under authority of Judge Delaney for "Restitution $30,800.42."

9. On January 7, 1985, after Affiant had been in custody for four (4) days, a falsified order was signed by Judge John Delaney (Doc. 136, Ex. 7) that was cast as an original order and made no reference to any earlier order, directing the Brazos County Sheriff to "find" and confine Affiant in the Brazos County Jail and to safely keep him there until he purged himself of civil contempt by paying $30,099.42 into the registry of the Court. It was only in this falsified court order that Defendant Rollins was awarded his fees for his services.

10. In Court Document No. 19, paragraph 17, filed in October 1986, Defendant Leticia

Wilkerson admits that at approximately 3:00 o'clock p.m., on January 3, 1985 she confined Affiant in the Brazos County Jail. And in paragraph 19 of the answer she admits that on January 7, 1985 she did serve a capias on the Affiant while the Affiant was incarcerated at the Brazos County Jail.

11. Annexed to this affidavit and identified as exhibit 4, is a true copy of an admission by Leticia Wilkerson (signed by her attorney) admitting that she executed a return of a capias on January 7, 1985 stating that she "arrested the within named Roland Lee Goad at 272nd District Court, in Brazos County, Texas and taking His bond, which is hereby returned, placing Him in the County Jail of Brazos County, Texas."

12. Affiant was served with the capias while incarcerated in the Brazos County Jail as admitted in Doc. No. 19. Affiant was not at or near the 272nd District Court on January 7,

1985, as shown on the falsified capias. A signed copy of the capias has never been filed in the court records of Brazos, County.

13. On August 12, 1985, Defendant Rollins, acting on behalf of Mary Beth Goad, filed a new lawsuit against Affiant. The suit was never served on Affiant, although he was incarcerated just a few yards from the District Clerk's Office where the court papers were filed. Affiant first learned about the suit when Defendant Rollins made one of his public pronouncements about the case that was reported in the local press on August 21, 1985. On August 12, 1985 Judge John Delaney issued an "Order For Disclosure" (Doc. 135, Ex. 9) directed to Zelma G. King at the Air Force Accounting and Finance Center, for her to disclose privileged information from the personnel and pay records of the Affiant to Defendant Rollins. Affiant was never informed that a search was being made of his official Air Force

records, and no information from Affiant's records was placed into evidence at the court hearing on September 13, 1985.

14. On August 29, 1985, Defendant Rollins amended the lawsuit asking that Affiant be confined in the Brazos County Jail (where he was already incarcerated) for civil contempt until he delivered to Mary Beth Goad a fraction of "benefits" received "from, and including, **December 21, 1984 until April 15, 1984.**" - An impossible period. The Show Cause Order directed Affiant to appear at 10:00 o'clock a.m. on September 13, 1985 to show cause why he should not be confined in the Brazos County Jail until he pays a fraction of his "benefits" that he received "from, and including, **December 21, 1985 until April 15, 1985.**" - Such impossible dates appearing twice in the show cause order. The District Clerk issued a notice to the Affiant on August 29, 1985 that also contained these impossible dates

in two places. (Exhibit 5).

15. Judge John Delaney signed a "Judgment of Contempt and Order of Commitment" on September 13, 1985 directing Affiant be incarcerated in the Brazos County Jail until he paid a fraction of those "benefits" he received "from and including **December 21, 1985 until April 15, 1985.**" Such impossible dates appearing in five (5) places on the order. (Exhibit 6).

Petitioner's Exhibit No. 6 appended to his affidavit in opposition to summary judgment filed in the trial court on October 6, 1989. (Doc. No. 146, R. 71-73).

NO. 26,934

MARY BETH GOAD	§	IN THE DISTRICT COURT
V	§	OF BRAZOS COUNTY, TEXAS
ROLAND LEE GOAD	§	272ND JUDICIAL DISTRICT

JUDGMENT OF CONTEMPT AND
ORDER OF COMMITMENT

On the 13th day of September, 1985, came on to be heard the First Amended Motion for Enforcement filed herein on the 29th of August, 1985 by MARY BETH GOAD, Movant therein, which Motion suggested to the court that ROLAND LEE GOAD, Respondent therein, is in contempt of this Court by his failure and refusal to obey, from and including December 21, 1985 until April 15, 1985. the following order of this Court in its Decree of Divorce, which was signed by this Court on September 19, 1980, appeal from which was not perfected and which is therefore final:

"IT IS FURTHER ORDERED, that ROLAND LEE GOAD shall, upon receipt of all United States Air Force Retirement benefits, immediately deliver twelve/twenty-sevenths (12/27) of said retirement benefit, by United States mail to MARY BETH GOAD at her current place of residence."

Said Decree of Divorce did award to MARY BETH GOAD, as her sole and separate property, "All right, title and interest in and to twelve/twenty-sevenths (12/27) of the United States Air Force Retirement benefits of ROLAND LEE GOAD AF#462368682", and did further state that ROLAND LEE GOAD was thereby "divested of all right title [sic], and interest in and to" said same twelve/twenty-sevenths (12/27) of United States Air Force Retirement benefits.

MARY BETH GOAD appeared in person and by her attorney, and announced ready for trial.

ROLAND LEE GOAD appeared in person, and

pro se, and announced ready for trial.

After examining the pleadings, and hearing the evidence and argument of counsel for MARY BETH GOAD, and of ROLAND LEE GOAD, pro se, THE COURT FINDS AND NOW HOLDS THAT:

1. This Court has jurisdiction of this proceeding;

2. The First Amended Motion for Enforcement filed herein is in all respects proper and sufficient;

3. ROLAND LEE GOAD was afforded due and proper notice of these proceedings; and that

4. ROLAND LEE GOAD is guilty of violating the order of this Court contained in said Decree of Divorce, above-referenced, and that:

a. ROLAND LEE GOAD AF#462368682 received from the United States Air Force Accounting and Finance Center in Denver, Colorado the sum of $6,329.93 in United States Air Force Retirement benefits, from and including December 21, 1985 until April 15, 1985.

b. ROLAND LEE GOAD has not delivered to MARY BETH GOAD, by United States mail or otherwise, at her current place of residence or elsewhere, immediately or otherwise, twelve/twenty-sevenths (12/27) of the United States Air Force Retirement benefits of ROLAND LEE GOAD AF#462368682, which he received from and including December 21, 1985 until April 15, 1985; and, as a result.

c. ROLAND LEE GOAD is in arrears to MARY BETH GOAD for a total sum of $2,813.02.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT THAT:

1. ROLAND LEE GOAD is found in civil contempt of this Court for failing and refusing to deliver to MARY BETH GOAD, twelve/twenty-sevenths (12/27) of all United States Air Force Retirement benefits which ROLAND LEE GOAD received from and including December 21, 1985 until April 15, 1985;

2. ROLAND LEE GOAD be placed in the County Jail of Brazos County, Texas, and remain therein

until he purges himself of his contempt by paying into the registry of this Court the sum of $2,813.02; i.e. twelve/twenty-sevenths (12/27) of the United States Air Force Retirement benefits of ROLAND LEE GOAD AF#462368682, which he received from and including December 21, 1985 until April 15, 1985;

3. All costs of Court incurred herein are assessed and taxed against ROLAND LEE GOAD. Said costs of Court shall include the sum of $ 1500.00 , reasonable attorney's fees of J. ANDREW ROLLINS which were incurred by MARY BETH GOAD, pursuant to V.T.C.A., Family Code, § 3.77. These attorney's fees are ordered paid directly to J. ANDREW ROLLINS by ROLAND LEE GOAD. J. ANDREW ROLLINS may enforce this order for fees in his own name by any means available for the enforcement of a judgment for debt.

4. A capias be issued commanding the Sheriff of Brazos County, Texas to arrest ROLAND LEE GOAD and so place him in the County Jail of Brazos County, Texas, and there safely keep him until he has purged himself of contempt as directed above; and

5. Said capias shall recite generally the proceedings in this case, and it shall be accompanied by a certified copy of this judgment and order to be served upon ROLAND LEE GOAD, as further evidence of the Sheriff's authority.

Signed this 13th day of September, 1985.

(signed)
John Delaney, Judge
272nd Judicial District Court
Brazos County, Texas

Excerpts from the "Third Amended Motion For Contempt" filed in the 272nd District Court on December 20, 1984 and annexed to Doc. # 78, filed April 10, 1987 in Goad v. Rollins, No. H-86-3433. (R. 558-561)

[R. 559] ORDER TO SHOW CAUSE

The above and foregoing Third Amended Motion for Contempt of MARY BETH GOAD, seeking to have ROLAND LEE GOAD found in civil contempt of court and confined only until ROLAND LEE GOAD purges himself of said contempt, having been considered and found legally sufficient for hearing thereon;

IT IS, THEREFORE, ORDERED that ROLAND LEE GOAD appear before this 272nd Judicial District Court of Brazos County, Texas, at the County Courthouse located in Bryan, Brazos County, Texas at 9;30 o'clock a.m. on January 3, 1985, to show cause:

1. Why ROLAND LEE GOAD should not be found in civil contempt of court for not immediately delivering to MARY BETH GOAD twelve/twenty-sevenths (12/27) of all United States Air

Force Retirement benefits, upon his receipt of same from, and including, January 30, 1981 through January 3, 1985.

2. Why ROLAND LEE GOAD should not be confined in the County Jail of Brazos County, Texas until he pays to MARY BETH GOAD twelve/twenty-sevenths (12/27) of all United States Air Force Retirement benefits which he received from, and including, January 30, 1981 through January 3, 1985. • • • • •

SIGNED this 20th day of December, 1984.

(signed)
JOHN DELANEY, Judge
272nd Judicial District Court
Brazos County, Texas